

W2006-01681-CA-R3-CD
IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS

THE THIRTIETH JUDICIAL DISTRICT

ORIGINAL

STATE OF TENNESSEE)

vs.)

Case No. 05-03038

VERN BRASWELL,)

Defendant.)

876-06
Clear

TRANSCRIPT OF EVIDENCE

Volumes 11 of 11 volumes

DECEMBER 5, 2005

THE HONORABLE JOSEPH B. DAILEY, PRESIDING JUDGE

APPEARANCES

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Reported by:

Katherine Knowles
Court Reporter

FILED

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Clerk of the Court

Vol. 11

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1 THE COURT: All right. Mr. Bailey, will you have
2 any additional proof?

3 MR. J. BAILEY: Your Honor, at this point in time
4 the defense is going to rest.

5 THE COURT: And, Ms. Weirich, will you have any
6 rebuttal proof?

7 MS. WEIRICH: No, Your Honor.

8 THE COURT: You can rest when the jury comes in
9 and we'll get right into argument.

10 MR. J. BAILEY: Your Honor, just let me go ahead
11 and renew my earlier motion before Your Honor brings in the
12 jury for judgment of -- directed verdict of acquittal without
13 argument.

14 THE COURT: Sure. And I'll deny it for the
15 reasons I've mentioned earlier. Are there any special
16 requests other than the curative instruction I gave them
17 earlier, which I plan to repeat in the charge? Anything else?

18 MR. J. BAILEY: What lesser includeds is Your
19 Honor planning to instruct?

20 THE COURT: All of the lesser includeds.

21 MR. J. BAILEY: Does that include reckless and
22 negligent homicide? Likewise, and I know Your Honor will give
23 the standards. I just want to ask. On the credibility of
24 witnesses when defendants testify, which is found in the
25 pattern jury instructions, 42.04, is Your Honor going to

1 charge that?

2 THE COURT: I'm going to charge the standard
3 charge I've always charged.

4 MR. J. BAILEY: I guess I'm asking the Court to
5 charge that.

6 THE COURT: Sure. The charge I give is either
7 identical to that or very close to it.

8 MR. J. BAILEY: And Your Honor is also going to
9 give the expert testimony charge?

10 THE COURT: Yes.

11 MR. J. BAILEY: That would be it for the defense.

12 THE COURT: All right. Bring in the jury.

13 (Jury present.)

14 THE COURT: Good morning, ladies and gentlemen.
15 We are ready to resume the trial at this time. Mr. Bailey,
16 any additional proof?

17 MR. J. BAILEY: Your Honor, at the present time
18 the defense rests.

19 THE COURT: All right. Ms. Carnesale,
20 Ms. Weirich, you may argue.

21 MS. CARNESALE: Thank you, Judge.

22 Ladies and gentlemen of the jury, on November 4th,
23 2004, or early morning hours of November 5th, 2004, Sheila
24 Braswell had the life squeezed out of her at the hands of that
25 man, her husband Vern Braswell. He put his hands around her

1 neck and he squeezed second after second, minute after minute
2 until the blood vessels in her eyes burst, until the tiny
3 blood vessels throughout her face, throughout her mouth burst
4 under that pressure as he squeezed and squeezed this woman's
5 neck, causing hemorrhaging throughout her entire neck,
6 throughout the layers of muscle into the cartilage in her
7 neck. He choked Sheila Braswell until she lost consciousness
8 and she died. He literally choked the life out of Sheila
9 Braswell in November of 2004.

10 The defendant wants you to believe that this occurred
11 as an act of rough sex. In fact at her asking, at her request
12 for a fix, that that's how this choking occurred. Ladies and
13 gentlemen, Ms. Amy Weirich told you in voir dire that there
14 are three things necessary for you to use in reaching a
15 verdict in this case. Number one is the evidence that comes
16 through the witnesses. And you've heard a lot of evidence
17 this week. You've heard witnesses testify. You have a table
18 full of exhibits that have been introduced. You are to take
19 that evidence and Judge Dailey very shortly will give you the
20 law in this case, the law that you apply to that evidence to
21 reach a verdict.

22 And finally and very importantly what you came with,
23 your common sense, ladies and gentlemen. You are to use your
24 common sense. Remember what we heard this week in the
25 evidence and take the law and apply it to that evidence. And

1 I'm going to ask you to do that right now as I talk to you
2 this morning.

3 And let's go over what we heard this week with regards
4 to how this woman had the life choked out of her last
5 November. The defendant and Ms. Braswell, Sheila, married in
6 1994. In 1995 the defendant was in rehab, and Sheila was
7 living with a friend and went to visit him in rehab where he
8 choked her, put his hands around her neck and squeezed until
9 her voice became raspy, until she had marks on the neck that
10 were visible hours later when she went home to her roommate.
11 This wasn't an act of kinky sex. This wasn't at her request.
12 This was out of anger at her. This was out of control that he
13 was trying to exhibit with her.

14 Let's go forward a year to 1996. Sheila's still living
15 with the defendant, still married to the defendant. They're
16 living in Millington. And what happens? Another fight. The
17 defendant's angry. And let's listen to what Sheila said
18 happened. We've got some of her own words and you're welcome
19 to review this, and I urge you to go over this in your
20 deliberations. Let's hear what Sheila said. On the night of
21 April 17th, 1996, between 10 and 11 p.m., my husband and I had
22 a dispute. During this dispute he hit me, slapped me in my
23 face, which resulted in a scratch on my right cheek and sore
24 jawbones. He also choked me, pulled my hair, threw me up
25 against the wall and chair, choked me from behind, cutting off

1 my air supply and told me to say my prayers. Do you think he
2 told her once again to say her prayers in November of last
3 year when he followed through on the choking? We'll never
4 know. Sheila's not here to tell us.

5 But she did go get an order of protection after that
6 incident. She still stayed with him. She was still married
7 to him and she had kids with him. And we know that when she
8 was pregnant with him, yet another altercation. Vera Cole,
9 the defendant's sister-in-law who's married to his brother, a
10 member of their family came forward to tell you what she knows
11 about Sheila and their relationship. And she told you that
12 Sheila appeared at her door late one night crying, upset, car
13 packed full of her things. She wanted to come stay with her
14 because she's pregnant and Vern had dragged her down the
15 stairs by her hair, and Vera saw an injury to Sheila's mouth.

16 Ladies and gentlemen, use your common sense in
17 evaluating what happened last November, what the defendant
18 wants you to believe happened versus what you've heard was
19 going on between them.

20 The defendant acquires a girlfriend Kristie Woods in
21 2002. She's a young girl, a small girl like Sheila, easy to
22 control, easy to manipulate. She does what he wants. He sets
23 her up in an apartment. Their relationship, according to both
24 of them, has a lot to do with sex. Kristie told you they had
25 sex as often as they could, pretty much any chance they got.

1 She's living in an apartment that he pays for and they date.
2 And eventually, he gets around to mentioning that he's
3 married. This doesn't deter her and she continues to date
4 him. But when she gets out of line, what does he do? Where
5 does he put his hands?

6 She told you that at a party where she was dancing with
7 other people, he got angry and he put his hands around her
8 neck. And based on that, Kristie contacted Sheila, told
9 Sheila that they were having an affair. What did Sheila do?
10 Sheila met with her and talked to her, followed her home that
11 night to make sure she got home okay, knowing that Vern had
12 been calling all night long looking for Kristie.

13 Sheila files for divorce in June of '04 after that
14 meeting. She has a lawyer. She files for divorce. She
15 continues to pay that lawyer, but she also continues to live
16 with Vern, to live with their kids, to continue in the
17 marriage. Kristie continues to date Vern. He told you
18 himself well, we didn't date after June. I still slept with
19 her but I kept telling her, you know, we're just friends.

20 September of that year. Again, Kristie displeases
21 Vern. She actually has the audacity while he's living with
22 his wife to go out with someone else. What does he do? What
23 is his response to that? He put his hands around her neck,
24 chokes her, throws her up against the wall, bangs her head on
25 the wall. This is Vern Braswell.

1 Ladies and gentlemen, I urge you to recall everything
2 you've heard, to listen to the witnesses that you heard and
3 what they told you and use your common sense to determine what
4 you think is true.

5 Let's look at what happened the night Sheila died.
6 Let's look at what the defendant did. What did he say
7 happened to anyone and everyone who would listen? The police,
8 the paramedics, friends, family, anyone and everyone that he
9 talked to and he talked to a whole host of people that morning
10 of the fifth. And he told everyone who would listen we were
11 having sex. I went and got in bed. She went and got in the
12 bathtub. I went to sleep. I woke up. Sheila was dead or
13 dying in the bathtub. She was submerged in water in the
14 bathtub. That was his story over and over and over and over
15 again. Not once to anyone in private, in public, to the
16 police did he say this is so embarrassing but this is what we
17 do and this is what happened. I choked her as a sex act and
18 something went wrong. Not one single time was there any
19 mention.

20 Look at his statement with the police officers. You
21 have it in evidence. They go over the sex. They asked him
22 did he ejaculate. He says no. They talked in intimate
23 details of things of that nature. He had every single
24 opportunity anyone would have in a small room with two male
25 detectives to tell them this is so horrible but here's what we

1 do in the privacy of our bedroom. And, ladies and gentlemen,
2 he never told them that because that's not what happened, I
3 submit to you. He told everyone who would listen that she
4 drowned in the bathtub.

5 Let's also look at how he acted that night. What were
6 his actions? Was he acting like someone who just accidentally
7 killed a loved one? Or was he acting like someone who was
8 trying to cover something up? You have the records in
9 evidence and I ask you to look at them. But let's consider
10 all the phone calls he made. We've heard so much about his
11 cell phones, his home phone, who he called. Vera Cole tells
12 you that he called her house, his brother's cell phone at 1:36
13 a.m., right smack in the middle of the time that he's supposed
14 to be having this night of love with his wife, he's calling
15 his brother.

16 What we do know from the phone records is that the very
17 first three phone calls he made after he found -- supposedly
18 found his wife in the bathtub were to a Memphis Police
19 Department Lieutenant John Mitchell, not a neighbor, not a
20 doctor, not 911, to an acquaintance who is a high-up in the
21 Memphis Police Department. Use your common sense, ladies and
22 gentlemen. What was he trying to do? And after that only did
23 he call 911, he continued to call John Mitchell over and over
24 and over and over and over and over, 19, 20 times in the
25 course of 40 minutes.

1 What was he trying to do? John Mitchell wasn't the
2 only one. He called other police officers that he knew, not
3 close friends. These weren't close friends. These weren't
4 family members. What do those actions reveal? Those actions
5 reveal that this was a man who was panicked, who was afraid
6 and who was trying to figure out what he was going to do
7 because he had just killed his wife. He had just murdered his
8 wife and he didn't want 911 there until he figured out what he
9 was going to do.

10 We heard the 911 call. Did that make any sense?
11 Sheila Braswell was 4-foot-11 inches, 125 pounds. He tells
12 the 911 operator he can't get her out of the bathtub, can't
13 get her out of the bathtub. I'm trying. I'm scared.
14 Finally, she says, sir, can you drain the water out of the
15 bathtub then? If you can't lift her out of the bathtub,
16 you've got to get her out of that bathtub because of course
17 the 911 operator thinks she's drowning. Again, Vern Braswell
18 trying to cover up what he's done.

19 Now, ladies and gentlemen, I also want you to consider
20 his actions and what took place afterwards. Were those
21 actions, were what Vern Braswell did actions that were
22 consistent with someone who loved his wife and accidentally
23 killed her in a bizarre sex episode? Or were those actions
24 consistent with someone who just killed his wife because she's
25 divorcing him and he was angry and when he gets angry he

1 chokes?

2 Let's think about what he did afterwards. You heard
3 the jail calls. You heard his demeanor from the jail. You
4 heard his priorities from the jail, what he talked about, what
5 he was concerned with, how he acted. And you heard that he
6 kept calling Kristie Woods, a woman that he supposedly broke
7 up with five months earlier. He asked about her all the time.
8 How's "The Soldier"? Have you heard from "The Soldier"?
9 What's "The Soldier" doing? Is "The Soldier" underground?

10 Finally, he gets through to Kristie and he talks to her
11 at work because in fact, her mother took her underground as we
12 heard, to get her away from that man who had just killed one
13 woman. He talks to Kristie Woods and what is he saying to
14 her? Does he say leave me alone, leave my wife alone, leave
15 my family alone as he insists that's the only thing he would
16 say to her? No. He says you're my favorite cousin. Here's
17 how you can write me and keep it secret. I communicate with
18 you through my thoughts and through my dreams. Vern Braswell
19 was every bit as involved with Kristie Woods in November and
20 December of 2004 as he was a year earlier.

21 Ladies and gentlemen, use your common sense in
22 examining everything you've heard and everything that I'm
23 telling you this morning. Everything we've heard this week
24 are actions and incidents consistent with someone who murdered
25 his wife, who murdered this woman, mother of two, beloved

1 friend of many.

2 Now the Judge is going to instruct you on the law. And
3 the law in this case is very important. I'm going to touch on
4 that just for a moment with you right now. Vern Braswell is
5 charged with first degree murder. First degree murder is
6 defined as the following: Any person who commits the offense
7 of first degree murder is guilty of a crime. For you to find
8 the defendant guilty of this offense the State must have
9 proven beyond a reasonable doubt the existence of the
10 following essential elements: That the defendant unlawfully
11 killed the alleged victim, Sheila Braswell; and that the
12 defendant acted intentionally. A person acts intentionally
13 with respect to the nature of the conduct or to a result of
14 the conduct when it is the person's conscious objective or
15 desire to engage in the conduct or cause the result. And
16 finally, that the killing was premeditated. A premeditated
17 act is one done after the exercise of reflection and judgment.
18 Premeditation means that the intent to kill must have been
19 formed prior to the act itself. It is not necessary that the
20 purpose to kill preexist in the mind of the accused for any
21 definite period of time.

22 There is no definite period of time required. There is
23 no five minutes and up. Two minutes and up. 60 seconds and
24 up requirement for premeditation. All it means is that the
25 intent to kill must have existed prior to the act.

1 Now the Judge is also required under the law to charge
2 you with what is called "lesser included offenses," lesser
3 degrees of murder. So you will hear about first degree
4 murder, but the Judge is also required to give you lesser
5 included; second degree murder, voluntary manslaughter,
6 reckless homicide, negligent homicide.

7 But, ladies and gentlemen, he will instruct you it is
8 your duty to consider the charged offense first degree murder.
9 You are to deliberate on that offense first. And unless and
10 until you unanimously decide that he is not guilty of the
11 first degree murder, it is only then that you are to consider
12 the lesser included offenses.

13 Last November Sheila Braswell had the life choked out
14 of her by the defendant. We will never know exactly how that
15 happened, exactly what angered Vern Braswell that night, what
16 he found, what he thought that he decided once again to take
17 control of Sheila Braswell, show her who's boss. Perhaps it
18 was the divorce check dated October 24th that was in the
19 kitchen that her mother found. Perhaps he found that. Who
20 knows. We will never know exactly what ticked him off, but
21 what we do know beyond any reasonable doubt is that he put his
22 hands around her neck and he squeezed the life out of Sheila
23 Braswell. He did this unlawfully. He did this intentionally.
24 And he did this with premeditation, taking at least three
25 minutes of constant pressure as we heard from Dr. Joye Carter

1 to squeeze and squeeze until the life left her body.

2 Ladies and gentlemen, it is now time for you to hold
3 Vern Braswell accountable for what he did. It's time for you
4 to find him guilty as charged of first degree murder. And I
5 ask you to do that this morning.

6 THE COURT: Mr. Bailey.

7 MR. W. BAILEY: May it please, Your Honor, ladies
8 and gentlemen of the jury. Let me first at the outset thank
9 you for your patience and attention that you've given
10 throughout this trial. You have agreed when you raised your
11 hand, took the oath to serve as this panel, you agreed to
12 discharge one of the highest callings that a citizen in this
13 country can render and that is jury service. You agreed and
14 took the oath that you would follow the law. And let me
15 quickly say that jury service is something that everybody in
16 the world doesn't have the opportunity of doing. And
17 fortunately in this country, an indictment alone or a charge,
18 an accusation doesn't get you snatched off the streets and
19 held indefinitely without benefit of a trial. That's what we
20 do here.

21 Now, you made certain promises when you were being voir
22 dired or examined. And those promises consisted of the first
23 being that you would follow the law. The second promise being
24 -- and apply the law. The second promise being that you would
25 look at the evidence and weigh the evidence and be persuaded

1 by the evidence alone, that you wouldn't be motivated by
2 sympathy one way or the other. And it's easy in a murder case
3 to be swayed by or driven by emotions of the moment because we
4 do have a life that was lost. And nobody regrets that, the
5 proof is going to show, as much as our client Vern Braswell.
6 But he can't bring her back. You can't bring her back.

7 The other thing you promised is that you would call a
8 ball a ball and a strike a strike. You said that you would be
9 objective and fair, that you wouldn't lean one way or the
10 other. You wouldn't lean for the prosecution, nor would you
11 lean for the defense, but you make this a level playing field.

12 We also talked about burden of proof. You said and you
13 promised when you took your oath that you would require the
14 prosecution, these prosecutors, these fine prosecutors, to
15 establish guilt beyond a reasonable doubt. And you said you
16 wouldn't look at suspicion or go on good instinct or look to
17 extraneous material outside the proof in this case. You said
18 you would apply your common senses. And you said if
19 reasonable doubt wasn't established, and each one of you said
20 that your course would be simple, you said that you would
21 return a verdict of not guilty. That's what you said.

22 You also said that this young man sits over here
23 enshrouded with one of the most sacred cloaks and that is a
24 presumption of innocence. And you said you wouldn't -- that
25 you would give him the benefit of that presumption. And you

1 said that that presumption wouldn't be removed unless it was
2 with cogent, competent, convincing proof, that as far as
3 you're concerned, that his sitting over here as a defendant
4 doesn't mean anything to you, that you would wipe that out of
5 your minds the fact that he's sitting over here charged. And
6 we talked about the grand jury indictment. And we talked
7 about the indictment being no more than a summons to get him
8 to appear in court, that he has to honor his appearance once
9 you're indicted, just like in a civil case, I instructed the
10 analogy.

11 We talked about a civil case and I showed you the
12 difference that in a civil case is by greater weight or
13 preponderance of the evidence, which is a far cry different
14 from proof beyond a reasonable doubt in a criminal case.
15 Standard of proof is entirely different. You're talking about
16 a whole different ball game.

17 We talked about direct and circumstantial evidence.
18 You promised that if the circumstantial evidence chain didn't
19 follow the links, didn't connect like in a bracelet, follow
20 the links, don't connect, you don't have a bracelet. That's
21 what you said. And His Honor is going to charge you the
22 guidelines involving circumstantial evidence.

23 This is not a direct evidence case. We talked about
24 direct evidence being where somebody said I saw what happened,
25 I was there. In this case this case is built entirely, this

1 man is charged entirely on circumstantial evidence, entirely
2 on circumstantial evidence.

3 Now one other thing on your promise and then I'm -- I'm
4 going to talk about this evidence. You said that if you had
5 some reservation, some moral reservation about guilt --

6 MS. WEIRICH: May we approach, Your Honor?

7 THE COURT: You may.

8 (Bench conference commenced.)

9 MS. WEIRICH: There's no charge on moral
10 certainty.

11 THE COURT: I don't plan to charge on moral
12 certainty. I haven't since, I guess since Judge Nixon in
13 Middle Tennessee reversed a death penalty case when it was
14 charged.

15 MR. W. BAILEY: Very well.

16 (Said bench conference concluded.)

17 MR. W. BAILEY: Thank you, Your Honor. That if
18 you had reservation where you couldn't, after leaving this
19 courtroom, feel that you did the right thing, that there was
20 proof beyond a reasonable doubt, that you'd resolve those
21 reservations in favor of this young man sitting over here.

22 Now you heard -- the Court is going to charge you about
23 first degree murder. He's going to charge you about other
24 degrees of homicide; first degree, second degree,
25 manslaughter, criminal negligent homicide and negligent

1 homicide. He's going to walk you through those. I won't take
2 the time to do that. That's the Court's job, that's Judge
3 Dailey's responsibility.

4 But I will talk with you about the elements of first
5 degree. And one of the things that's required, a key element
6 is premeditation, premeditation. That means that you must
7 plan to kill. That you must kill with an intent. It can't be
8 passionately driven. There must be a certain calmness about
9 the killing. It can't be sporadic without pre-planning. And
10 it must be intentional. You must have committed premeditation
11 with one thing in mind, that is a death to result. Now if you
12 don't find that in this case after having examined the proof
13 when you deliberate, then your job is clear, that's required
14 that you do the right thing and you find this young man not
15 guilty of premeditation and intentional murder.

16 There are certain -- you heard the testimony. And let
17 me tell you one thing that runs throughout this testimony.
18 And that this man was at the point of a nervous breakdown,
19 that he was in uncontrollable sobbing, that he was crying on
20 the telephone trying to get help, that he called several
21 people trying to get help. Now, does that show the calmness
22 and the cold-bloodedness of somebody who just committed first
23 degree murder?

24 There are certain areas of reasonable doubt in this
25 case that leap out at you. I have pinpointed seven of them.

1 I'm going to walk you through. The first area of reasonable
2 doubt is quite apparent. It stands out like a sore thumb.
3 It's called motive. It's called motive.

4 Here's a young man who's at the peak of his career.
5 Four months earlier he just got an outstanding promotion after
6 having worked himself up from a substitute teacher in the
7 school system, he's worked himself up to assistant principal,
8 four months earlier. He's got everything going for him. Why
9 would he want to blow it? Why would he want to blow it? It
10 doesn't make sense. It does violence to your common sense to
11 think that he'd want to blow it.

12 He's got two young kids; one five, one seven. Adores
13 both of them. Why would he want to blow it? It does violence
14 to your common sense.

15 Let's talk about his wife. You heard a lot of
16 discussion about what he and his wife did prior to '96 about
17 him grabbing her by the hair and abusing her. But did you
18 hear anybody come here and take that witness stand and talk
19 about what he did to her after '96? Was there any live
20 testimony to come up here on this stand and say that he
21 mistreated his wife after '96? You heard about him running
22 around, but did you hear him talk about, anybody talk about
23 him abusing his wife after '96? That's nine years since
24 anybody talked about him physically abusing his wife, nine
25 years ago. Does that not do violence to your common sense?

1 He had everything going they did as a couple. They traveled
2 together.

3 But now his running around got him involved with
4 Chastity (sic) Woods. And what did he try to do? What does
5 the proof show? That's what we're talking about. We're
6 talking about evidence. What does the proof show happened
7 between him and Chastity (sic) Woods? The proof shows he
8 tried to break it off. That's what the proof shows. In June
9 he tried to break it off. He said leave -- I wanted her to
10 leave my family alone.

11 Now we talked earlier about this not being a case of
12 morality, that you're not here to evaluate the propriety or
13 his conduct regarding his relationship with Ms. Woods.
14 Ms. Woods is a fine lady. And those things happen. Those
15 things have always happened and will continue to happen, and
16 we're not here to wage a campaign against infidelity. That's
17 not our job here today.

18 He had a business. The business was going well. Why
19 would he want to blow it? He didn't have a motive.

20 Now let's talk about number two area of reasonable
21 doubt. Let's talk about the environment in which this young
22 lady's death occurred and the circumstances. Is there any
23 suggestion that somebody had a weapon? Anybody bludgeoned her
24 to death or a firearm or a stabbing? But more importantly,
25 where did her death result, ladies and gentlemen? Her death

1 resulted in the bathroom right next to the bedroom where these
2 two fine young children rest sleeping. Does that not do
3 violence to your common sense, that one would deliberately
4 with premeditation, intentionally kill his wife with neighbors
5 next door with his children in the next bedroom? Does that
6 comport with common sense? I submit to you that that's
7 reasonable doubt area number two.

8 Let's look at his conduct, reasonable doubt area number
9 three. Let's look at his conduct in terms of whether it
10 squares with one who's a cold-calculated killer, planned a
11 killing. You heard the prosecutor here earlier say by her own
12 admission that he didn't know what to do, to start calling
13 around to his buddies. Is that more consistent with one who's
14 had an accidental situation tragedy in the family or one who
15 cold-bloodedly and calculatedly planned a killing? I submit
16 to you the one who coldly and calculatedly and calmly plans a
17 killing always has an exit strategy. You know what you're
18 going to do. You know where you're going. You've planned
19 this. You've got a cover-up. You've got a scheme. Where is
20 the reasonable doubt proof here about a scheme? There is
21 none.

22 Reasonable doubt area number four, I believe, the next
23 area. Where is proof? You've seen the witnesses. You've
24 heard from the witnesses. You've heard and seen exhibits that
25 His Honor has permitted to be introduced. Where is the proof

1 of intent? Where is proof of intent? You could say we know
2 that there was an intent if he took a weapon and shot her
3 because you know that a gun is calculated to result in death.
4 But where is the intent here? And where is the premeditation?
5 Where is the planning? Where is the cold-bloodedness?

6 The next area of reasonable doubt. You heard from the
7 medical examiner. You heard from the police. And another
8 thing from that leaps out at you like a sore thumb. Where is
9 evidence of a struggle? No body wounds. The medical examiner
10 said that would be important. You saw the photographs of her
11 with her hands in bags to preserve the fingerprint. That's
12 important because if you're being -- if you're struggling
13 you're going to ward off instinctively and here's where you
14 really use your common sense, ladies and gentlemen. Here's
15 where you really use your common sense. If you're being the
16 subject of an intentional strangulation you'd struggle.
17 That's just instinctive. There is nothing, nothing in the
18 record here, nothing to suggest that there was a struggle.
19 There's nothing. And the medical examiner said that would be
20 important, that's why we look for body wounds, defensive body
21 wounds to see whether there was a struggle. Those fingernails
22 give us important information. They were intact. There was
23 nothing to suggest that there was any struggle or had a fight.
24 Very important. Those are your very survival instincts that
25 come into play when you're being attacked is a struggle. Use

1 your common sense.

2 The next area of reasonable doubt, let's talk about the
3 sexual practices of this couple. And everybody -- nobody
4 condemns anybody because of your sex practice. That's your
5 own private domain. This is not a trial about one's sexual
6 practices. You're not here to pass judgment on that. You're
7 not to be judgmental on one's sexual practices. That's about
8 as sacred as one's religion. That's something that
9 everybody's entitled to, his or her lifestyle. This is not a
10 trial about a lifestyle. But it just so happens that we've
11 got involved here kinky sex, violent, rough, kinky sex. Rough
12 sex. Rough sex.

13 Now if you want to convict him because he was involved
14 in rough sex, then go ahead. But I don't think you're going
15 to do that. I think you're going to follow your oath and keep
16 your promise, that you're going to look for premeditation. If
17 that's not there, then your course is clear.

18 Now let's talk about their sexual practice. Let's talk
19 about erotic asphyxiation. You've heard from the paramedic
20 who talked about erotic asphyxiation. You heard from the
21 medical examiner who talked about erotic asphyxiation. And
22 you heard from our client who told you in graphic detail what
23 was involved, how he and his wife had their sexual practice.

24 And one of the things that you should look at, I say
25 respectfully, is the detail in which he explained it. Even to

1 the point of when he or she, rather, did her tapping to let
2 him know to back off, you're choking me too much or where she
3 would go limp. And isn't that consistent with the practice?

4 And we knew that there would be a strange area in which
5 to venture. So that's why we got one of the leading clinical
6 sexual experts in this country to come here and share and give
7 you jurors and give the Court and give myself some insight
8 into what that was all about. You heard from Dr. Schwartz
9 from Johns Hopkins University. And one of the things about
10 Dr. Schwartz is that he is mechanical. When I say
11 "mechanical," he doesn't know anybody here. Doesn't know me.
12 Doesn't know this young man over here, Mr. Braswell. Doesn't
13 know anybody. Doesn't know the prosecutors. So he came to do
14 one thing, to provide information for the benefit of you
15 jurors and the Court. He wanted to walk us through the tunnel
16 of that kinky sex experience called "asphyxiation."

17 And he, just like the medical examiner said and just
18 like the paramedic said, he emphasized that it involves a
19 certain amount of choking, which is a euphemism for
20 strangulation. It involves just another name for
21 strangulation. It involves a certain amount of choking.

22 Why do we have these sex toys on the table? Why were
23 they introduced into evidence? It certainly wasn't designed
24 to embarrass anybody. It certainly wasn't designed to offend
25 you jurors. It was designed to do one thing, to show you the

1 lifestyle, the sexual lifestyle that's consistent with the
2 kinky sex of the choking sex for heightened sexual arousal.
3 That's why we brought the sex toys.

4 And you even heard the medical examiner say that in her
5 experience with this kinky experience called "erotic
6 asphyxiation," the sex toys as part of the crime scene would
7 be important, would provide her information. One thing that
8 we know. One thing we know in that sex play of choking, that
9 it's risky. But the other thing is and incidentally, mind
10 you, nobody took that stand and say -- and deny that not one
11 piece of shred of evidence that contradicts that this was
12 their sex practice, not one.

13 Now there is proof that not only did this young man
14 engage with it with the decedent, his wife, but also when he
15 was having sex with Ms. Woods and she demonstrated. She
16 grabbed Mr. Lafferty, the deputy sitting over here, from
17 behind and demonstrated for your satisfaction how he -- how
18 this applied, what went on in this kinky sexual experience.

19 But again, please, now if you decide this case on a
20 moral basis, if you get off into the morality of it in terms
21 of whether that was right or wrong, then we don't stand a
22 chance. But you're not going to do that. You're going to
23 look at the evidence. You're going to look at the presumption
24 of innocence and reasonable doubt.

25 Now you've heard a lot of -- of some testimony, I

1 should say, about him prior to '96 having marital difficulties
2 with his wife. But let me assure you, let me assure you
3 that's a smoke screen. That's a smoke screen. When the proof
4 is weak or reasonable doubt, you throw up a smoke screen. You
5 bring in and you trot in all this other stuff. They've got no
6 bearing on what happened on November 4th. You bring all of
7 that in, tongue-in-cheek saying I'm not trying to say that
8 because he did that, that he did it on November 4th but I'm
9 just trying to show that he had the disposition or that it
10 goes to his motive or his intent. There's nothing in the
11 record about him ever having tried to kill his wife. Nothing
12 in the proof about that. It's a smoke screen.

13 You know, I mentioned a tree earlier in my opening
14 statement and I guess some of you say well what in the world
15 are you talking about in terms of a tree? I'm talking about
16 that tree of reasonable doubt, that tree of reasonable doubt.
17 It's just as strong as any oak tree in this county. And you
18 -- you can't move that tree, Prosecutors, with a chain by
19 trying to cut it down limb by limb. You can't yank down.
20 That tree stands firmly affixed in the courtroom in the middle
21 of it. And the only way you can get that tree, to move that
22 tree of reasonable doubt, the only way you can get that tree
23 of reasonable doubt overcome or removed is by proof, cogent
24 and convincing proof. And if you don't, that tree still
25 stands.

1 And let me finally say that I don't get the opportunity
2 of making the last comments. Under our procedural rules, the
3 prosecutor makes the first opening statement and the
4 prosecutor is last at bat with the last statements, last
5 comments. Last people you hear from will be these
6 prosecutors. You won't hear from us. When I sit, our defense
7 is done. It's up to you. But one of the things I want to
8 remind you is that these prosecutors weren't at the scene.
9 Neither was I. So we don't know what happened. All those
10 prosecutors are doing are theorizing. That's all they're
11 doing. They don't know anymore about this case than you.

12 But when they get up here behind us, I want you to look
13 at them and I want you to ask them, say where is the motive?
14 Why in the world did this young man want to kill his wife, two
15 fine children, two fine kids five and seven, everything going
16 for him just got a career promotion? Why in the world would
17 he want to kill his wife? Make her answer that.

18 Also, look at her and make her answer with proof beyond
19 a reasonable doubt as to how come he would do such a horrible
20 thing with the children in the next bedroom. The next thing
21 is say, Ms. Prosecutor, where is the intent? Ms. Prosecutor,
22 where is the intent? Where is the premeditation? Where is
23 the planning?

24 And finally, I want you to look at them and say
25 Ms. Prosecutor, they both were involved in this kinky sex

1 practice and we heard how it occurred. We heard the
2 defendant's account of what happened. And we know he didn't
3 tell the police initially. We know that in his statement he
4 didn't say to the police I was having kinky sex. But,
5 Ms. Prosecutor, did you expect him to say that to the police?
6 Using your common sense, would he say I was having kinky sex
7 to the police? Ms. Prosecutor, why was this man just in
8 uncontrollable distress? Why did he cry and constantly cry,
9 cry to Ms. Braswell's mother? She defined him as constantly
10 sobbing. Why was he constantly sobbing? You saw him on the
11 witness stand. Why was this man in such emotional turmoil and
12 distress? Is this the mark of a cold, calculated killer?
13 Absolutely not. It defies your common sense. It does
14 violence to it. Look at her and make her -- and ask her that.

15 Ask her, say why are you bringing this smoke scene here
16 about all of those other events that have nothing to do with
17 November 4th? Is that not smoke in mirrors? Is not that to
18 try to suggest that maybe something else happened? What
19 relevancy does that have to November 4th, Ms. Prosecutor, if
20 it's not a smoke screen?

21 Again, I want to thank you, ladies and gentlemen.
22 You've been very patient and very attentive. And I'm not
23 going to try -- I wouldn't dare try to go over everybody's
24 testimony. You heard it. You made notes. You did a very
25 good job of following this trial, all of you. And for that,

1 there's one thing that you give this young man, our client
2 Mr. Braswell, justice. That's all he's asking, justice.
3 Thank you very much.

4 THE COURT: Ladies and gentlemen, we'll take about
5 a ten-minute recess at this time. As always, do not discuss
6 the case in any way among yourselves during the recess.

7 (Jury out.)

8 THE COURT: Take him out. Stand in recess.

9 (Recess.)

10 THE COURT: Bring out the defendant, please. All
11 right. I don't care if anybody else comes in or not, but are
12 there others that intend to come in? If there are, I'd prefer
13 that they come in before we resume the argument and charge.

14 DEPUTY WILLIAMS: They're not out here, Judge.

15 THE COURT: Okay. That's fine. Then bring in the
16 jury, please.

17 (Jury present.)

18 THE COURT: Ms. Weirich.

19 MS. WEIRICH: Thank you, Your Honor.

20 It's November 5th, 2004, around two o'clock in the
21 morning, maybe a few minutes before. The defendant gets home.
22 We know he's not home around 11 because he's called Kristie
23 Woods, told her that he had been at the club waiting on the
24 heating and air guy. He tells her he's on his way home.
25 Maybe he is, maybe he isn't. We know he calls his brother's

1 cell phone at 1:36 and then again at 1:38. Well, he couldn't
2 have been killing his wife while he was calling his brother's
3 cell phone and he couldn't have been making love to his wife
4 while he was calling his brother's cell phone. So what's he
5 doing?

6 Suppose for a minute that he's driving home or maybe
7 still at the club or maybe God knows where else. He gets home
8 around two and his wife's in the tub. She's taking a bath.
9 Think for a minute. This is a man who has been cheating on
10 Sheila Braswell for two years at this point, two years. Have
11 you heard anybody tell you that Sheila Braswell and Vern
12 Braswell had an open marriage, whatever you wanted to do was
13 fine? No. He was cheating on his wife. Do you think Sheila
14 Braswell was real happy to see him at two o'clock in the
15 morning or whenever it was about that time that he got home
16 November 5th, 2004? Do you think she greeted him with open
17 arms? No.

18 Suppose for just a minute that she's in the tub and she
19 starts arguing with him. She's had it. She's filed for
20 divorce. She's met Kristie Woods. She's asked Kristie Woods
21 to leave her husband alone.

22 I told you in opening statement that Sheila Braswell
23 was flip-flopping between leaving Vern Braswell and trying to
24 keep her family together. She filed for divorce. She didn't
25 move out. Those two things are inconsistent, yes.

1 Going back to 1995 when we know he beat her and choked
2 her and Magra Harden tried to get her to do something about
3 it. She never would. But she had finally in the summer of
4 2004 taken some action and filed this complaint for divorce.
5 You'll have it back in the jury room. You can read through
6 it. Plaintiff would show to the Court that the Defendant is
7 guilty of such inappropriate marital conduct as renders
8 cohabitation unsafe and improper. That's not just a we ain't
9 getting along anymore. She'd had it. So he comes strolling
10 in around two o'clock in the morning. Do you think maybe she
11 thought he's been with Kristie Woods again? Here he is
12 telling me we're going to work it out. Here he is telling me
13 we're going to make things right. What's he doing out at two
14 o'clock in the morning on a Thursday night, Friday night?

15 But see, what Sheila Braswell forgot that fateful
16 night, her last night, while she was sitting in her tub that
17 would soon become her coffin, she forgot the fundamental rule
18 of being in a relationship with the defendant. And that rule
19 is nobody tells me what to do. Nobody tells me where to go
20 and when to come home. You, Sheila Braswell, better act
21 right. But I can carry on with whomever I want to whenever.
22 Nobody leaves Vern Braswell.

23 You saw what happened. You heard what happened.

24 (Timer went off.)

25 MS. WEIRICH: That's five minutes from the moment

1 I stood up and started talking to you until now when that
2 beeper went off, that's five minutes. If we split the time in
3 which Dr. Carter told you that it would take for Sheila
4 Braswell's neck to be squeezed through the six layers of
5 hemorrhaging that she saw, that's how long. Maybe even more.
6 Maybe a little less. But that's how long.

7 But let's get back to what probably happened that
8 night. You heard from Kristie Woods' own mouth what that
9 defendant did to her when she was seeing other men. Never
10 mind the fact that he's married. Never mind the fact that he
11 goes home to his wife and kids every night. My women don't
12 make me look like a fool because I'm in control. I'm calling
13 the shots. Kristie Woods had the audacity to dance with
14 someone at a party. You heard what happened to her. He put
15 his hands on her neck. Ms. Woods, was it a loving, playful
16 kind of hold? No, ma'am. Did it hurt? Yes, ma'am. Was he
17 applying pressure to your neck? Yes, ma'am.

18 And then in September of 2004, when he found out once
19 again that she had the audacity to be seeing another man,
20 never mind the fact that he's married and has two kids, what
21 did he do that day? He pushed her down on the couch. He
22 threw her up against the wall. He bashed her head against the
23 wall. And then as one final point of emphasis, as one final
24 reminder that I'm in control, he took her head, her small tiny
25 neck and slammed it against a glass coffee table.

1 Ms. Woods, was it a playful kind of hold? No, ma'am.
2 Was it the same kind of hold he would sometimes do when you
3 two were having sex? No, ma'am, it was nothing like that.
4 Did it hurt you? Yes, ma'am. Did it scare you? Yes, ma'am.
5 So we know what happens to the women in Vern Braswell's life
6 that try to tell him what to do.

7 They get their hair pulled. They get drug down the
8 stairs. They get choked to the point that hours later Magra
9 Harden can see the injuries on her. They get choked to the
10 point that hours later Magra Harden can hear that her voice is
11 different. So he moseys in around two in the morning. His
12 wife has the nerve to question where he's been. And he
13 teaches her that final lesson. He won. He won.

14 He held her neck in that tub, ladies and gentlemen, but
15 there was no struggle. If there was no struggle, why did
16 Sheronda Smith find long hair, lots of long hair in the tub
17 when she drained it out? You heard her testify. This wasn't
18 just hair that you lose anyway in the shower. This was long
19 hair that belonged to Sheila.

20 If there was no struggle in the tub, why are there two
21 ladies' earrings and a man's nipple ring in the bottom of the
22 tub? Is that where people normally keep their jewelry?
23 That's your sign of a struggle, ladies and gentlemen. She's
24 grabbing at him any way she can. He's got her pushed up
25 against the wall of the tub. We're talking about a tub that

1 from wall to wall is five-foot-one inch. We're not talking
2 about a swimming pool. She's got nowhere to go. She's got no
3 way to escape. He's got her up against that back corner and
4 she's grabbing at him the best she can. Why isn't there any
5 evidence under her fingernails? She was under water. She sat
6 in that water. You heard Dr. Carter tell you the washer woman
7 effect, the wrinkleness that we see that develops on the skin
8 after you've been in the water, it was more pronounced on the
9 hands than the feet. You heard her tell you that. Washes
10 away.

11 You see, we don't get to make the crime scene, ladies
12 and gentlemen. Prosecutors and police officers aren't called
13 before defendants decide to squeeze the life out of somebody.
14 We're not notified and told to bring note pads and video
15 cameras. We get what they leave us. When he finally after
16 three, four, five, six or maybe seven minutes of squeezing her
17 neck with his hands, when he finally sees he's done, does he
18 panic? Of course he panics. Nobody kills wanting to be
19 caught. There's never been a murderer walk through these
20 doors that wanted to get caught, that wanted a jury to stand
21 up and say, you know what? We, the jury, find you guilty of
22 murder in the first degree. Of course he panicked. But he
23 wasn't about to undo what he wanted to do. He wasn't about to
24 get her out of that water and try to help her.

25 Did he call his neighbor, the guy that came over to get

1 the kids, the guy that was concerned enough and friend enough
2 to come and say let me come get the kids? He didn't call him.
3 Come help me get her out of the tub. And this is a man that
4 you heard testimony who carried his wife when she was
5 pregnant. He couldn't lift her. Everyone who took the stand
6 said there was no reason she couldn't have been removed from
7 that tub. Where there's a will, there's a way. The problem
8 was he had her right where he wanted her. He had her right
9 where he wanted her, dead.

10 But why didn't the boys hear anything? How much
11 screaming is she going to be able to do? How much noise is
12 she going to be able to make when he is squeezing her so hard
13 that Dr. Carter sees hemorrhaging through all six layers of
14 the neck and all around? Bursts blood vessels in every part
15 of her face, her mouth, the piece of ligament that connects
16 your lip to your gum for God's sake, the pooling of the blood
17 in the eyes. How much screaming is she going to be able to
18 do?

19 Who does he call? His good buddy, best friend, just
20 talked to him an hour before Lieutenant John Mitchell with the
21 Memphis Police Department. You heard Mr. Mitchell testify.
22 Came in, in uniform. Been a lieutenant for many, many years.
23 Been with the police department many, many years. He called
24 him at 3:55:57, 3:56:47, 3:57:17. The first of those calls
25 was 12 seconds. The second was three. The third was four.

1 Then he called 911.

2 Y'all heard the tape and you can take it back to the
3 jury room and listen to it again. He's wailing I want to help
4 my wife. Help my wife. Come help my wife. Maybe what would
5 have helped your wife the most is if she'd gone on and left
6 you the first time you choked her. Maybe if she'd listened to
7 Magra Harden, that would have been the best help Sheila
8 Braswell could have gotten.

9 He finally gets around to calling 911 and they carry on
10 trying to get him to get her out of the tub. And then you
11 hear him on the cell phone calling somebody else. Why is he
12 calling these law enforcement people? For the very reason
13 that you're sitting here today, so he can come into court and
14 say but I called law enforcement people. What cold-blooded,
15 calculated murderer in their right mind would call law
16 enforcement people after they've killed their wife? The kind
17 that think they're in control of everybody and every
18 situation. The kind who call the shots. The kind who think
19 they're above the law. If I call all my friends that I know
20 from the police department and the fire department, then I can
21 come in some day and tell a jury call I called law enforcement
22 personnel. He called them to try to scam them. No, he didn't
23 flee to California. No, he didn't run out of the house and
24 leave his two boys there. He's in control, ladies and
25 gentlemen.

1 This is his drama that he's written. If he really
2 wanted to help his wife, he didn't want her dead, why wasn't
3 911 the first call he made? Children. Children in
4 kindergarten know that in the case of an emergency you dial
5 911. You mean to tell me that a man with a master's degree
6 doesn't know that? Give me a break.

7 He calls them at 3:57:48. The paramedics told you they
8 arrived around four. The air was still moist and the water
9 was still very warm. All of the paramedics and EMTs that
10 touched the water told you that to their hand through their
11 gloves the water was warm. An hour later at 5:07 the water
12 was tested, and I believe it was 94.6 degrees, which is warm
13 enough for an adult to take a bath.

14 So why is the water still warm? Why an hour after the
15 paramedics had been there is the water still warm if Mr.
16 Watson, Mr. Darryl -- I've forgotten his last name but the man
17 from Watson's Pool and Spa, told you that in a tub like this,
18 which is not a jacuzzi, it's a home bathtub with jacuzzi jets,
19 in a bathtub like this, you're going to have to add hot water
20 less than every 15 minutes. So why is that water still hot?
21 Because he wanted everybody to think she drowned. So he ran
22 more hot water. He turned on that hot water as hard and fast
23 as he could while he's dialing all his phones and calling all
24 his buddies and pushing all the numbers. Hey, this is
25 perfect. She's in the tub anyway.

1 See, when -- I kept waiting for the defendant or
2 somebody to say that they were having this night of erotic
3 asphyxia that he kept wanting to talk about. Boy, he liked
4 talking about that, didn't he? Didn't want to talk about a
5 lot of other things. Didn't want to talk about some of the
6 chokings. Wanted to deny all of that. The only choking he
7 wanted to admit to is the one that, well, we've got spelled
8 out here in black and white that Judge Robilio signed, the
9 order of protection. All the others though, no. They're just
10 lies. People coming in and lying on him. But he sure wanted
11 to talk to y'all in detail about the private life that he and
12 Sheila Braswell shared. The ironic thing about that is there
13 is only two people that know the truth about what happened
14 that night, that man right there who has every reason in the
15 world to tell you a story and Sheila Braswell.

16 But anyway, he wanted to talk all about that. And I
17 kind of kept waiting for him to say that they were having this
18 night of fun sex that lasted for, what, three hours according
19 to him? And that she died after the asphyxia and he put her
20 in the tub to cover it up. I kept waiting for that. Unh-unh,
21 he didn't say that. He never said that. He didn't think it
22 through very well. She was already in the tub taking her own
23 bath. That's why her glasses are laid gently to the side of
24 the tub. They weren't knocked off of her in a struggle. She
25 took them off when she got in the tub. But he ran more hot

1 water to make it look like a drowning. When the police got
2 there, when the EMTs got there, when anybody with ears got
3 there, that's what he told them.

4 We were having sex in the tub, then we got out of the
5 tub and we went in the bed and she got up about 1:30 because
6 her legs were hurting her and she got back in the tub.
7 Something made me wake up, even though I'm a hard sleeper,
8 even though I don't wake up very easily, something made me get
9 up and I found her dead in the tub. She must have drown. And
10 then the police start looking around and they start doing the
11 job that we want them to do, looking at everything, talking to
12 the only person who was a witness, the defendant. They didn't
13 immediately charge him with murder and take him down here and
14 throw him in a cell. And you heard Sergeant Kjellin say that,
15 you know, we like to talk to witnesses before friends and
16 family and the media and everything can influence what they
17 tell us. So Sergeant Kjellin pulled him aside at the house
18 and said -- just the two of them, just two men -- what
19 happened? We were having sex in the tub. We got out of the
20 tub. We got back in the bed, had sex, my wife's legs were
21 hurting. She got back in the tub. I woke up two hours later
22 and she was dead. See, it wasn't adding up. And his story he
23 was trying to sell you yesterday doesn't add up either, ladies
24 and gentlemen, not one bit.

25 We don't want you to just look at one side of the

1 picture. This isn't about the prosecution and the defense and
2 us against them and them against us. We are at the point in
3 the criminal justice process where those roads have converged.
4 Those roads have come together in front of you. And it is
5 your responsibility to fulfill the oath you took, to uphold
6 the laws of the State of Tennessee, to look at everything, not
7 just the fact that he choked her in 1995 therefore he must
8 have killed her in November of 2004, that he choked her in
9 1996 therefore he must have killed her in 2004, that he choked
10 her in 1997, pulled her hair and drug her down the stairs when
11 she was pregnant therefore he must have killed her in 2004.

12 Mr. Bailey wants you to ask me why it's relevant, why I
13 would bring you that proof. I'll tell you. That goes to
14 motive. That's intent, ladies and gentlemen. That goes to
15 show that it was a lack of mistake, that it was not an
16 accident.

17 You see, once he realized that we might know all that
18 stuff, what else is he going to say? How else is he going to
19 explain away the fact that he had his hands on her neck that
20 night? Oh, I know. I can say she wanted it. You can say
21 whatever you want. But this process, ladies and gentlemen,
22 the reason that you are all here is to return a verdict that
23 truth dictates and justice demands.

24 In a moment Judge Dailey is going to read to you the
25 law that applies to this case; murder in the first degree,

1 premeditated murder. We talked about that in voir dire and
2 opening statement. What is premeditation? Premeditation does
3 not have to exist in the mind of that defendant for any set
4 period of time. It only has to exist before you start choking
5 her. And while you keep applying that pressure for five, six,
6 maybe seven minutes, that, ladies and gentlemen, is
7 premeditation.

8 We can also look to someone's behavior after the murder
9 to see what they intended to do, to see what they
10 premeditated. What did he do? He tried to surround himself
11 with his buddies and take control just like he did with Sheila
12 Braswell, just like he did with Kristie Woods. You heard him
13 on those jail tapes. If you want to, go back and listen to
14 the hours and hours of them. You heard Sergeant Merritt
15 testify that he listened to all of them.

16 The defendant never once cried for his wife. You heard
17 what he was worried about, his palm pilot, somebody get me my
18 palm pilot. Somebody get that club cleaned out. Make sure
19 "The Soldier" is underground. Is "The Soldier" underground?
20 Hey, we've got to talk gender-neutral here. Do you remember
21 them talking about that? Don't say "she" on the tape because
22 they might figure out who we're talking about here. We've got
23 to talk gender neutral, "The Soldier." Why was he so busy
24 trying to hide her if she wasn't part of the motive? Why was
25 he so busy trying to hide her if she wasn't the reason he was

1 going to get rid of his wife and make it right for he and
2 Kristie?

3 He's still sticking to the story that they broke off
4 the relationship in June of '04. She told you she last talked
5 to him a few months ago. They've been communicating. He
6 talked to her that night that he went home and killed his
7 wife. He lied about her to Judge Dailey at a bond hearing
8 this summer. If she's not the motive, why lie about her? Why
9 make up all this?

10 Judge Dailey will instruct you on the murder first,
11 first. And then he will go to murder second and voluntary
12 manslaughter and reckless homicide and criminally negligent
13 homicide.

14 Murder second degree is a knowing killing. What it
15 lacks that murder first has is premeditation. Okay. But you
16 didn't necessarily think about it, but maybe you're in a fight
17 with somebody, you get a gun and you shoot them. Or maybe
18 they made you mad three weeks ago at school or wherever and
19 you get a gun. He's got a gun. Y'all are arguing or whatever
20 and the shots are fired.

21 Voluntary manslaughter is a killing in the heat of
22 passion. The classic example is when has husband comes home
23 and finds his wife in the bed with another man and he loses it
24 and shoots them both or shoots one of them.

25 Reckless homicide is on New Year's Eve when you go

1 outside at the stroke of midnight and shoot a gun in the air
2 for fun and unfortunately, the bullet falls three blocks away
3 and kills an eight year old in bed. You didn't plan to hurt
4 anybody. You didn't put your hands around anybody's neck and
5 hold them and apply all the pressure that your
6 five-foot-four-inch body could until the life was sucked out
7 of her.

8 Criminally negligent homicide is the tragedy that we
9 all live through every summer in Memphis when babies are left
10 in cars. Someone makes a mistake, a horrible mistake and
11 somebody dies. That's criminally negligent homicide.

12 The reason I go through all this with you is when
13 Judge Dailey reads to you the law that applies to each of
14 those charges, and again, the law requires that he do that,
15 that he read these charges to you. When he reads them to you,
16 you're going to think well, criminally negligent homicide,
17 reckless homicide, voluntary manslaughter, murder second, all
18 of those seem to fit this situation. Of course they do.
19 Because as we move up the rungs of the ladder to murder in the
20 first degree, those lesser includeds are swallowed up. Okay.

21 The lesser includeds of criminally negligent, reckless
22 homicide, voluntary manslaughter and murder second are all
23 included within murder first degree. All right. So as you go
24 and listen to those, you're going to think that sounds like --

25 MR. J. BAILEY: Your Honor, may we approach?

1 THE COURT: You may.

2 (Bench conference commenced.)

3 MR. J. BAILEY: Your Honor, that's an improper
4 argument. Your Honor's instruction and the law in Tennessee
5 is they are to first consider murder in the first degree and
6 go down. And what she's telling them is that as they look at
7 these things and go up the rung, that's not how it's done.

8 THE COURT: No, no. I think she's just explaining
9 the definition that elements that are so tuned by the greater
10 and the lessers, just logically one of them could assume that.
11 But no, she's not -- in fact, Ms. Carnesale told them just the
12 opposite, you start from murder first and work your way down.

13 (Said bench conference concluded.)

14 MS. WEIRICH: Those lessers that I talked to you
15 about are consumed by the greater charge of murder in the
16 first degree. And what murder in the first degree has that
17 the others don't is the premeditation, okay. So you'll hear
18 that charge.

19 The other charge I want to talk to you briefly about is
20 credibility of witnesses. You've heard from a lot of
21 witnesses this week. And they are all -- you can ignore all
22 of what somebody has told you. You can ignore none of what
23 they have told you. You can ignore some of it and accept some
24 of it. And every witness that takes the stand is judged by
25 the same set of standards under the law of the State of

1 Tennessee. And I believe Judge Dailey will tell you, and if
2 he tells you something differently, listen to what Judge
3 Dailey tells you. You are the exclusive judges of the
4 credibility of the witnesses and the weight to be given to
5 their testimony.

6 If there are conflicts in the testimony of the
7 different witnesses, like when Vern Braswell tells you I
8 didn't call my brother that night or when Vern Braswell tells
9 you I didn't choke Sheila Braswell at the rehab center, those
10 kinds of things and you've heard from other people that it did
11 happen, if there are conflicts in the testimony of the
12 different witnesses, you must reconcile them if you can.

13 In forming your opinion as to the credibility of a
14 witness, you may look to the proof, if any, of his or her
15 general character, the evidence, if any, of the witness'
16 reputation for truth and veracity, the intelligence and
17 respectability of the witness, his or her interest or lack of
18 interest and the outcome of the trial, his or her feelings,
19 his or her apparent fairness or bias, his or her means of
20 knowledge, the reasonableness of his or her statements and
21 their appearance and demeanor while testifying.

22 There have been some things testified to that have been
23 in conflict. And you'll have to go back and ask yourself why
24 that is. When you do, ask yourself of all the people you
25 heard from, who would have the biggest reason to lie to you?

1 Who would have the biggest reason to try to sell yet another
2 story about what happened November 5th, 2004?

3 Let's talk about Dr. Carter. You heard her tell you
4 that she was familiar with erotic asphyxia. She was familiar
5 with those types of cases. She performed autopsies on many of
6 them. She'd been to scenes where she had seen them. Was this
7 a case of erotic asphyxia, Dr. Carter? No. Why do you say
8 that? Because of the injuries, because of what was not found
9 at the scene.

10 All of that stuff that Vern Braswell enjoyed so much
11 explaining to y'all yesterday, go through those crime scene
12 pictures and tell me where you see any of it. Go through this
13 crime scene sketch and tell me where the officers found any of
14 it. They didn't. He brought it in here. Who knows where it
15 came from. He tells you it comes from their house, but who
16 has a reason to make that up?

17 Dr. Carter told you that this was hands on a neck. And
18 she made the distinction because Mr. Bailey tried to get her
19 to go down this road that it could have been a forearm. No,
20 it couldn't have, Mr. Bailey. No, sorry, Mr. Defendant, it
21 couldn't have been because of the extent of the injury and the
22 coverage of the injury. This was not an injury that was
23 located in the front part of the neck. This was not an injury
24 where there was anything broken or fractured. This was an
25 injury consistent with pressure being applied all over the

1 neck with two hands. Like a choking? Yeah. Like when you
2 mean to kill somebody.

3 There was petechiae, the rupturing of the blood vessels
4 all over the face, the hemorrhaging. Go back through your
5 notes and review what she told us about what she found.

6 And then contrast that, if you will, with Mark Schwartz
7 from St. Louis, Missouri, drove in for \$3000 yesterday. Found
8 by the defense team on Saturday. Came down here to tell you
9 that after reviewing the extensive file that he was sent, you
10 know, he never bothered to call us. Never bothered to call
11 the police. Never bothered to talk to any witnesses. Who did
12 he talk to? The guy in control. The guy that's calling the
13 shots. He looked at five pictures, five, of Sheila Braswell's
14 body, the way it was positioned on the floor. Did you catch
15 that?

16 The EMTs put her on the floor. If he'd stayed another
17 day and we'd paid him another \$3000, was he going to tell us
18 that the EMTs performed erotic asphyxia on her? What's he
19 talking about? How relevant is that, that the position where
20 the paramedics put her lifeless body, trying to do what they
21 could, that that was relevant? No. Or is he maybe just
22 saying what Mr. Power Man over there wanted him to say for
23 \$3000?

24 He's not a medical doctor. He's a doctor of science.
25 He didn't dispute what Dr. Carter found. I was waiting for

1 them to call in some medical examiner to come in and say this
2 wasn't a manual strangulation. This was a drowning and here's
3 why. No. He'll say whatever they want him to say for \$3000.
4 And all he had to look at was what they had given him. And
5 the only person he bothered to talk to was the guy that's got
6 the biggest motive to lie.

7 Contrast his testimony with Dr. Carter. Look at the
8 pictures of the injury, the extent of the injury to Sheila
9 Braswell's body. Ask yourself a few more questions when y'all
10 are back in that jury room.

11 Why was he so worried about that nipple ring? You
12 remember Sheronda Smith telling you that he had just -- here's
13 a man whose wife has just died some, as far as he knows,
14 unexplained death. The last time he saw her she was
15 unconscious in the bathtub, according to his story. How much
16 sense does that make, you're going to leave your unconscious
17 wife in the bathtub full of water? The next thing he knows
18 she's dead. The police come to his house, drag him down here
19 to 201 Poplar to talk to him. He gets home hours later. He's
20 apparently still not told his kids your wife -- your mother's
21 dead.

22 But what's he worried about? I seem to have lost my
23 nipple ring. I can't find my nipple ring. His own mother
24 said what? What are you worried about? His nipple ring.
25 Because see, by now it's the light of day. By now the police

1 have been called. They've talked to him. He's given this
2 statement that you can take back and read that you heard
3 Sergeant Merritt read to you. He's locked into something, but
4 he's panicking because he's thinking you know what, this may
5 not all go off as well as I planned. I may have got caught in
6 a little lie here. I've got to find that nipple ring because
7 if they find that nipple ring, they might think -- they might
8 realize that Sheila was fighting for her life. Sheila was
9 struggling the only way she could to have one more day with
10 her two boys.

11 Sheila was using the only weapon she could, just
12 grabbing at him with her hands. And if they find that nipple
13 ring, they might realize I killed her. If they find Kristie
14 Woods, they might find out I had a reason to kill her. If
15 they find out that Sheila had filed for divorce, they might
16 think that maybe our marriage wasn't so great.

17 And then the big bomb was dropped. We found out about
18 all the other incidents, all the other times he's put his
19 hands on her neck, put his hands on Kristie Woods' neck.

20 Mr. Bailey made a big point in opening statement and
21 just a moment ago that Kristie Woods and this defendant
22 engaged in erotic asphyxia. That's not what I heard her say
23 at all. In fact, I asked her, Ms. Woods, when I asked you
24 down in my office what -- if you two engaged in erotic
25 asphyxia, her answer to me was what is that. She didn't know

1 what it was, had never heard of it. When she testified in
2 front of you and we discussed it she said no, no, no, no, we
3 didn't do that. He would just sometimes hold me to position
4 me to keep me still. Was it forceful? No. Did you ever lose
5 consciousness? No. Did you ever get dizzy? No. Was it
6 different when y'all were having sex and he would hold your
7 neck and the time when he grabbed your neck and he pushed it
8 against the coffee table? Yeah. They never engaged in it.

9 And if Sheila Braswell, God love her, could walk in
10 that back door right now and tell us the rest of the story,
11 what do you want to bet she'd say I never heard of it either?
12 What do you want to bet she'd say I don't know what he's
13 talking about? We were fighting because I was tired of him
14 carousing around with Kristie Woods. We were fighting because
15 he found the check that I wrote out the last week of October
16 to the divorce attorney, the divorce complaint that wasn't
17 nonsuited until five days after her death. It's kind of hard
18 to proceed with a divorce case when you're dead. That's why
19 it was dismissed, ladies and gentlemen. Look at the date on
20 it. We were fighting about that, ladies and gentlemen of the
21 jury.

22 But see, I forgot the number one rule. I forgot that
23 Vern Braswell is in control. He calls the shots. And he came
24 out with those hands that he's come at you with before and he
25 squeezed my neck before but it wasn't anything like that. It

1 was longer and harder this time. He didn't let go. The times
2 before he always let go and I was always able to get away and
3 go live with my sweet sister-in-law and brother-in-law or go
4 live with my dear friend Magra Harden, or I was able to go
5 down to Judge Robilio's chambers and get an order of
6 protection. This time I wasn't so lucky. This time I died at
7 the hands of my husband who held my neck while I struggled
8 until my body had physically reached the point where I could
9 no longer struggle.

10 And a few times he held my head under the water. How
11 do we know that? Dr. Carter told you there were signs of
12 water fluid in the lungs, not enough to rule this a drowning
13 but enough for her to tell you, Dr. Carter, could this have
14 been a situation where while she was being choked her head was
15 held under water to gain control over? Oh, yes, ma'am,
16 definitely. Is it a drowning? No.

17 Troy Walls, the officer from the Millington Police
18 Department, told you something that I want you to be sure to
19 remember when you go back and you read through the facts as
20 Sheila Braswell, you know, it's ironic these are the only
21 words she can speak to us. This is all we know about her side
22 of their marriage. Why'd she stay with him? I don't know.

23 What a great day it would be in this city and all the
24 others if prosecutors didn't have to deal with women who were
25 abused and continued to stay with their spouses, if

1 prosecutors didn't have to look at women and say, you know,
2 you can make this all better by leaving, getting your number
3 changed, moving to another town, whatever, go into a shelter,
4 whatever you need to do. What a great day it would be if the
5 Sheila Braswell's of this city would come to us first looking
6 like that instead of when we usually meet them like that.

7 MR. W. BAILEY: Your Honor, may we approach?

8 THE COURT: You may.

9 (Bench conference commenced.)

10 MR. W. BAILEY: Counsel is arguing outside the
11 record in terms of how they usually meet.

12 THE COURT: Okay. Move on with regard to the
13 encounter of abused women in the prosecutor's office. We'll
14 move on from that.

15 (Said bench conference concluded.)

16 MS. WEIRICH: That's the last picture you have of
17 her. But we know that on this day, when according to Sheila
18 Braswell, now remember the defendant told you they were
19 fighting because she was having an affair. Remember that?
20 Sheila writes in here though and you can take this back and
21 look at it, we had a dispute over drinking and drugs. His
22 drinking and his drugs. He had slapped me in the face, pulled
23 my hair, threw me up against the wall and chair. Sound
24 familiar, doesn't it? Did that to Kristie Woods just last
25 year. Choked me from behind, cutting off my air supply, told

1 me to say my prayers. Think she got a chance to say her
2 prayers in those three to seven minutes?

3 I tried to leave. He restrained me because nobody
4 leaves Vern Braswell. Nobody tells him what to do. He tried
5 to punch me. He ripped my jewelry off, and he said that he
6 would be paid alimony when we got divorced.

7 She was able to leave the house and call 911. And
8 Officer Walls who was a young officer, a new officer riding
9 with Officer Nicholson that night. Even though he didn't
10 remember this incident like it had happened yesterday and he
11 was very honest with you about that, he did remember it. He
12 said there were a few of those incidents, a few of those calls
13 he made early on in his career that still stick with him and
14 this was one of them.

15 The defendant had already left the scene by the time
16 they got there. Fred Jackson told you he was the fire
17 department lieutenant first to get there that drew the sketch
18 that you have in evidence that shows you how the body was when
19 he had halfway pulled her out to show that he had done
20 something, but for some reason couldn't get all 120 pounds of
21 her out of that tub. Lieutenant Jackson told you that when he
22 walked in that bathroom the air was still moist. Remember
23 that? The bathroom was still wet like somebody had just run
24 water.

25 Yeah, Mr. Power Man over there had just turned the

1 water on again, made it look like a drowning. But then when
2 the medical examiner didn't cooperate with that, she ruled it
3 a strangulation, he had to think of something else. But why
4 would Lieutenant Jackson remember that?

5 Myron Fair with OCU testified, he had a suit and tie
6 on, testified that he got a call from the defendant. Mr.
7 Bailey said wasn't he crying and distraught and incoherent
8 when you talked to him? No, I don't remember that. He was
9 just calling, telling me his wife was dead. 18 calls he
10 placed to a Lieutenant John Mitchell, Memphis Police
11 Department, his big buddy. Even Lieutenant Mitchell told you
12 he didn't know why he was calling him.

13 Pearline Washburn, she was the first witness you heard
14 from, Sheila Braswell's mother. Been here everyday. Remember
15 something that she told you that was important. At the time
16 we didn't know it was important. She told you that when she
17 sat on the couch next to the defendant and touched his robe,
18 his robe was wet. Why was his robe wet if according to his
19 story yesterday he didn't put it on until the paramedics were
20 at his door? Did you hear him? He grabbed it at the end of
21 the bed when he was on his way to answer the door when he
22 thought he heard the paramedics. How did it get wet? Was
23 there a flood in the hallway? No, it got wet when he was
24 struggling, trying to kill his wife as she was resisting,
25 trying to fight for her life. That's when it got wet.

1 That's also, ladies and gentlemen, why there is no sign
2 of a struggle in the bedroom. There wasn't a struggle in the
3 bedroom. There was a struggle in the bathtub. That's the
4 crime scene, ladies and gentlemen, where the jewelry was,
5 where the hair was, where the hot water was, where the body
6 that had already undergone rigor mortis was.

7 This isn't about people's lifestyles and who you like
8 and who you don't like. This is about seeking truth and
9 justice. That's why it's all laid out for you here. That's
10 why you're called here to make that determination, to make
11 that decision. Before you leave the courtroom, Judge Dailey
12 will send you off with the words "to return a verdict that
13 truth dictates and justice demands." And it's because of
14 those words that we talk so much in voir dire about the law,
15 the evidence and the common sense. No sympathy, no prejudice.

16 We don't want you to just look at five pictures like
17 Mike Schwartz did. We don't want you to just listen to what
18 the defendant told you yesterday, which was completely
19 contrary to what he told the police and everybody else who
20 would listen. It's why the police department continues to
21 investigate after they take a statement like that. It's why
22 the medical examiner's office does their job. Everyone that
23 has testified has had a little bit to tell you. It is now
24 your job to take it all.

25 And in following the laws of the State of Tennessee

1 that Judge Dailey will read to you, to return the only verdict
2 that you can after you take everything and turn it inside out
3 and review it.

4 And when you go back there to do that, ask yourself
5 another question. Why did he tell the police that he didn't
6 ejaculate? After this night of love making, why did he say no
7 to that question? Do you think maybe that's why he so
8 willingly submitted to the DNA because he knew they could find
9 his DNA in her if he had? They hadn't had sex. She was in
10 the tub, the tub that soon became her coffin.

11 The only verdict you can return is that of guilty of
12 murder in the first degree.

13 THE COURT: Ladies and gentlemen, the State of
14 Tennessee versus Vern Braswell, Indictment Number 05-03038.

15 This indictment charges that the defendant did
16 unlawfully, intentionally and with premeditation kill Sheila
17 Braswell. This offense embraces and includes the lesser
18 offenses of murder in the second degree, voluntary
19 manslaughter, reckless homicide and criminally negligent
20 homicide.

21 The law makes it the duty of the Court to give in
22 charge to the jury the law relative to the case on trial and
23 the duty of the jury to carefully consider all of the evidence
24 delivered to them on the trial and under the law given them by
25 the Court, render their verdict with absolute impartiality.

1 The jury are the sole judges of the facts and of the
2 law as it applies to the facts in the case. In making up your
3 verdict, you are to consider the law in connection with the
4 facts; but the Court is the proper source from which you are
5 to get the law. In other words, you are the judges of the law
6 as well as the facts under my direction. The jury in no case
7 should have any sympathy or prejudice or allow anything but
8 the law and the evidence to have any influence upon them in
9 determining their verdict. They should render their verdict
10 with absolute fairness and impartiality as they think truth
11 and justice dictate. Every fact and circumstance in the case
12 you may consider in arriving at your verdict.

13 The indictment in this case is the formal written
14 accusation charging the defendant with a crime. It is not
15 evidence against him and does not create any inference of
16 guilt.

17 At times during the trial, I have ruled upon the
18 admissibility of evidence. You must not concern yourselves
19 with these rulings. Neither by such rulings, these
20 instructions, nor any other remarks which I have made do I
21 mean to indicate any opinion as to the facts or as to what
22 your verdict should be.

23 Statements, arguments, and remarks of counsel are
24 intended to help you in understanding the evidence and
25 applying the law, but they are not evidence. If any

1 statements were made that you believe are not supported by the
2 evidence, you should disregard them.

3 I instruct you that the words used in these
4 instructions importing a masculine gender include the feminine
5 and neuter.

6 The evidence and arguments in this case have been
7 completed, and it is my duty now to instruct you as to the
8 law. The law applicable to this case is stated in these
9 instructions, and it is your duty to carefully consider all of
10 them. The order in which these instructions are given is not
11 an indication of their relative importance. You should not
12 single out one or more of them to the exclusion of another or
13 others but should consider each one in the light of and in
14 harmony with the others.

15 You are the exclusive judges of the facts in this case.
16 You are also the exclusive judges of the law under my
17 direction. You should apply the law to the facts in deciding
18 this case. You should consider all of the evidence in the
19 light of your own observations and experience in life.

20 I will now explain to you the law applicable to the
21 charge in this indictment.

22 First degree murder. For you to find the defendant
23 guilty of this offense, the State must have proven beyond a
24 reasonable doubt the existence of the following essential
25 elements: That the defendant unlawfully killed the alleged

1 victim; and that the defendant acted intentionally.

2 A person acts intentionally when it is the person's
3 conscious objective or desire to cause the death of the
4 alleged victim. A defendant's conscious objective need not be
5 to kill a specific victim. If you find beyond a reasonable
6 doubt that the defendant intended to cause the result, the
7 death of a person, and that he did so with premeditation, then
8 the killing of another even if not the intended victim would
9 be first degree murder. And that the defendant -- that the
10 killing was premeditated.

11 A premeditated act is one done after the exercise of
12 reflection and judgment. Premeditation means that the intent
13 to kill must have been formed prior to the act itself. It is
14 not necessary that the purpose to kill preexist in the mind of
15 the accused for any definite period of time. The mental state
16 of the accused at the time he allegedly decided to kill must
17 be carefully considered in order to determine whether the
18 accused was sufficiently free from excitement and passion as
19 to be capable of premeditation. If the design to kill was
20 formed with premeditation, it is immaterial that the accused
21 may have been in a state of passion or excitement when the
22 design was carried into effect. Furthermore, premeditation
23 can be found if the decision to kill is first formed during
24 the heat of passion, but the accused commits the act after the
25 passion has subsided.

1 If you find from the proof beyond a reasonable doubt
2 the defendant is guilty of murder in the first degree, you
3 will so report and your verdict in that event shall be we, the
4 jury, find the defendant guilty of murder in the first degree.

5 Second degree murder. For you to find the defendant
6 guilty of this offense, the State must have proven beyond a
7 reasonable doubt the existence of the following essential
8 elements: That the defendant unlawfully killed the alleged
9 victim; and that the defendant acted knowingly.

10 Voluntary manslaughter. For you to find the defendant
11 guilty of this offense, the State must have proven beyond a
12 reasonable doubt the existence of the following elements:
13 That the defendant unlawfully killed the alleged victim; and
14 that the defendant acted intentionally or knowingly; and that
15 the killing resulted from a state of passion produced by
16 adequate provocation sufficient to lead a reasonable person to
17 act in an irrational manner.

18 The distinction between voluntary manslaughter and
19 second degree murder is that voluntary manslaughter requires
20 that the killing result from a state of passion produced by
21 adequate provocation sufficient to lead a reasonable person to
22 act in an irrational manner.

23 Reckless homicide. For you to find the defendant
24 guilty of this offense, the State must have proven beyond a
25 reasonable doubt the existence of the following essential

1 elements: That the defendant killed the alleged victim; and
2 that the defendant acted recklessly.

3 Criminally negligent homicide. For you to find the
4 defendant guilty of this offense, the State must have proven
5 beyond a reasonable doubt the existence of the following
6 essential elements: That the defendant's conduct resulted in
7 the death of the alleged victim; and that the defendant acted
8 with criminal negligence.

9 Criminal negligence means that a person acts with
10 criminal negligence when that person ought to be aware of a
11 substantial and unjustifiable risk that the victim will be
12 killed. The risk must be of such a nature and degree that the
13 failure to perceive it constitutes a gross deviation from the
14 standard of care that an ordinary person would exercise under
15 all the circumstances as viewed from the accused person's
16 standpoint.

17 The requirement of criminal negligence is also
18 established if it is shown that the defendant acted
19 intentionally, knowingly or recklessly.

20 Intentionally means that a person acts intentionally
21 when it is the person's conscious objective or desire to cause
22 the death of the victim.

23 Knowingly means that a person acts with an awareness
24 that his conduct is reasonably certain to cause the death of
25 the victim.

1 The requirement of knowingly is also established if it
2 is shown that the defendant acted intentionally.

3 Recklessly means that a person acts recklessly when the
4 person is aware of but consciously disregards a substantial
5 and unjustifiable risk that the alleged victim would be
6 killed. The risk must be of such a nature and degree that its
7 disregard constitutes a gross deviation from the standard of
8 care that an ordinary person would exercise under all the
9 circumstances as viewed from the accused person's standpoint.

10 The guilt of the defendant as well as any fact required
11 to be proved may be established by direct evidence,
12 circumstantial evidence, or by both combined.

13 Direct evidence is defined as evidence which proves the
14 existence of the fact in issue without inference or
15 presumption. Direct evidence may consist of testimony of a
16 person who has perceived by the means of his or her senses the
17 existence of a fact sought to be proved or disproved.

18 Circumstantial evidence consists of proof of collateral
19 facts and circumstances which do not directly prove the fact
20 in issue but from which that fact may be logically inferred.

21 When the evidence is made up entirely of circumstantial
22 evidence, then before you would be justified in finding the
23 defendant guilty, you must find that all the essential facts
24 are consistent with the hypothesis of guilt, as that is to be
25 compared with all the facts proved; they must exclude every

1 other reasonable theory or hypothesis except that of guilt;
2 and they must establish such a certainty of guilt of the
3 defendant as to convince the mind beyond a reasonable doubt
4 that the defendant is the one who committed the offense. It
5 is not necessary that each particular fact be proved beyond a
6 reasonable doubt if enough are proved to satisfy the jury
7 beyond a reasonable doubt of all the facts necessary to
8 constitute the crime charged. Before a verdict of guilty is
9 justified, the circumstances, taken together, must be of a
10 conclusive nature and tendency, leading on the whole to a
11 satisfactory conclusion that the defendant and no one else
12 committed the offense.

13 You enter upon this investigation with the presumption
14 that the defendant is not guilty of any crime and this stands
15 as a witness for him until it is rebutted and overturned by
16 competent and credible proof. It is, therefore, incumbent
17 upon the State before you can convict the defendant, to
18 establish to your satisfaction beyond a reasonable doubt that
19 the crime charged in the indictment has been committed; that
20 the same was committed within the County of Shelby and State
21 of Tennessee before the finding of this indictment and that
22 the defendant at the bar committed the crime in such manner
23 that would make him guilty under the law heretofore defined
24 and explained to you.

25 A reasonable doubt is a doubt based upon reason and

1 common sense after careful and impartial consideration of all
2 of the evidence in the case.

3 It is not necessary that the defendant's guilt be
4 proved beyond all possible doubt, as absolute certainty of
5 guilt is not demanded by the law to convict of any criminal
6 charge.

7 A reasonable doubt is just that, a doubt that is
8 reasonable after an examination of all the facts of the case.

9 If you find the State has not proven every element
10 beyond a reasonable doubt, then you should find the defendant
11 not guilty.

12 There are several modes of impeaching a witness. One
13 mode is to prove that a witness has at different times made
14 conflicting statements as to material facts of the case as to
15 which he testifies. Still another mode is by rigid and close
16 cross-examination to involve the witness in contradictions and
17 discrepancies as to the material facts stated by him.

18 Immaterial discrepancies or differences in the
19 statements do not affect their credibility unless there is
20 something to show that they originated in a willful falsehood
21 and you, members of the jury, are to determine how far the
22 testimony of any impeached witness has been impaired by any
23 invalidating process.

24 You will take all of the evidence adduced in the case
25 by the State and the defendant and give it a full, fair and

1 impartial consideration. If there are any conflicts in the
2 statements of the different witnesses, it is your duty to
3 reconcile them if you can, for the law presumes that every
4 witness has sworn to the truth but if you cannot, the law
5 makes you the sole and exclusive judges of the credibility of
6 the witnesses and the weight to be given their testimony.

7 In forming your opinion as to the credibility of a
8 witness, you may look to the proof, if any, of his general
9 character, the manner and demeanor of the witness, the
10 consistency or inconsistency of his statements, their
11 probability or improbability, his ability and willingness to
12 speak the truth, his intelligence and means of knowledge, his
13 motive to speak the truth or swear to a falsehood, his
14 interest or lack of interest in the outcome of the trial.

15 When the defendant makes himself a witness in his own
16 behalf, his credibility is to be determined by the same rules
17 by which the credibility of others is determined, and you will
18 give to the defendant's testimony in this case such weight as
19 you may think it entitled to.

20 You have heard testimony about the defendant's good
21 character. You should consider this testimony, along with all
22 the other evidence, in deciding if there is a reasonable doubt
23 as to the defendant's guilt.

24 Evidence has been introduced in this case regarding
25 certain prior acts of misconduct and/or crimes allegedly

1 committed by the defendant, Vern Braswell. It is up to you,
2 the jury, to decide whether or not you choose to rely on this
3 proof and if so, what weight you choose to give it.

4 If you do accredit this proof, it can only be used to
5 determine the specific issues of identity, intent or rebuttal
6 of accident or mistake. This evidence should not be used as
7 propensity evidence. As always, the State has the burden of
8 proving every element of the offense charged beyond a
9 reasonable doubt.

10 The rules of evidence provide that if scientific,
11 technical or other specialized knowledge might assist the jury
12 in understanding the evidence or in determining a fact in
13 issue, a witness qualified as an expert by reason of special
14 knowledge, skill or experience may testify and state his or
15 her opinions concerning such matters and give reasons for his
16 or her testimony.

17 Merely because an expert witness has expressed an
18 opinion does not mean, however, that you are bound to accept
19 this opinion. The same as with any other witness, it is up to
20 you to decide whether you believe this testimony and choose to
21 rely upon it. Part of that decision will depend on your
22 judgment about whether the witness's background and training
23 and experience is sufficient for the witness to give the
24 expert opinion that you heard. You must also decide whether
25 the witness's opinions were based on sound reasons, judgment

1 and information.

2 You are to give the testimony of an expert witness such
3 weight and value as you think it deserves along with all of
4 the other evidence in the case.

5 Members of the jury, you have been allowed to take
6 notes in this case. I charge you that these notes are for
7 your individual use only, and you should not use notes
8 directly or indirectly, explicitly or implicitly to persuade
9 other jurors as to the accuracy of said notes. They should
10 not be shown to others, nor compared, nor referred to in any
11 way as authority, but should be used privately only by the
12 maker of said notes as an aid to his or her individual memory.

13 The verdict must represent the considered judgment of
14 each juror. In order to return a verdict, it is necessary
15 that each juror agree thereto. Your verdict must be
16 unanimous.

17 It is your duty, as jurors, to consult with one another
18 and deliberate with a view toward reaching an agreement, if
19 you can do so without violence to individual judgment. Each
20 of you must decide the case for yourself, but do so only after
21 an impartial consideration of the evidence with your fellow
22 jurors. In the course of your deliberations, do not hesitate
23 to reexamine your own views and change your opinion if
24 convinced it is erroneous. But do not surrender your honest
25 conviction as to the weight or effect of evidence solely

1 because of the opinion of your fellow jurors, or for the mere
2 purpose of returning a verdict.

3 When you retire to consider your verdict in the
4 indictment, you will first inquire, is the defendant guilty of
5 murder in the first degree as charged in the indictment. If
6 you find the defendant guilty of this offense beyond a
7 reasonable doubt, your verdict should be, "We, the jury, find
8 the defendant guilty of murder in the first degree as charged
9 in the indictment."

10 If you find the defendant not guilty of this offense or
11 have a reasonable doubt of his guilt of this offense, you will
12 acquit him thereof and then proceed to inquire whether or not
13 he is guilty of murder in the second degree as included in the
14 indictment.

15 If you find beyond a reasonable doubt that the
16 defendant is guilty of this offense, your verdict should be,
17 "We, the jury, find the defendant guilty of murder in the
18 second degree as included in the indictment."

19 If you find the defendant not guilty of this offense or
20 have a reasonable doubt of his guilt of this offense, you will
21 acquit him thereof and then proceed to inquire whether or not
22 he is guilty of voluntary manslaughter as included in the
23 indictment.

24 If you find beyond a reasonable doubt that the
25 defendant is guilty of this offense, your verdict should be,

1 "We, the jury, find the defendant guilty of voluntary
2 manslaughter as included in the indictment."

3 If you find the defendant not guilty of this offense or
4 have a reasonable doubt of the defendant's guilt of this
5 offense, you will acquit him thereof and then proceed to
6 inquire whether or not he is guilty of reckless homicide as
7 included in the indictment.

8 If you find beyond a reasonable doubt that the
9 defendant is guilty of this offense, your verdict should be,
10 "We, the jury, find the defendant guilty of reckless homicide
11 as included in the indictment."

12 If you find the defendant not guilty of this offense or
13 have a reasonable doubt of his guilt of this offense, you will
14 acquit him thereof and then proceed to inquire whether or not
15 he is guilty of criminally negligent homicide as included in
16 the indictment.

17 If you find beyond a reasonable doubt that the
18 defendant is guilty of this offense, your verdict should be,
19 "We, the jury, find the defendant guilty of criminally
20 negligent homicide as included in the indictment."

21 If you do find the defendant guilty, you can convict
22 him of only one of the above named offenses charged and
23 included in this indictment.

24 If upon all the proof, you have a reasonable doubt of
25 his guilt of the offenses charged and included in the

1 indictment under the law defined and explained to you, it is
2 your duty to acquit him and your verdict should be, "We, the
3 jury, find the defendant not guilty in the indictment."

4 You will write your verdict as to the indictment on the
5 outside of the jacket and sign one of your names as foreman or
6 foreperson.

7 Take the case, consider all of the facts and
8 circumstances fairly and impartially and report to the -- and
9 report such verdict to the Court -- and report to the Court
10 such verdict as truth dictates and justice demands.

11 Anything further, Mr. Bailey? Ms. Weirich?

12 MS. WEIRICH: No, Your Honor.

13 MR. J. BAILEY: Nothing from the defense, Your
14 Honor.

15 THE COURT: All right. Ladies and gentlemen, you
16 will have the charge back in the jury room with you. Feel
17 free to reread any or all of it. When you have reached your
18 verdict in this case, whatever your verdict may be, I would
19 refer you to the last several pages of the charge and ask you
20 to follow the appropriate verdict form that can be found on
21 those last several pages in writing up your verdict.

22 Please, write your verdict on the outside of the
23 jacket, date it, sign one of your names as foreman or
24 foreperson. You'll have most of the exhibits back in the jury
25 room with you for your review as well. If there are any that

1 aren't passed back there that you want to view, let us know
2 and you can certainly view them in the courtroom.

3 And at this time I think given the time, we'll stop for
4 lunch. Once you've completed lunch, then you may begin your
5 deliberations. There won't be any need to come back into the
6 courtroom. But do not discuss the case during the lunch hour
7 even though we've gotten to this point in the trial. During
8 lunch you are not to discuss the case at all. It wouldn't be
9 right for two or three of you to be down at one end of the
10 table talking about the case.

11 Only after you've completed lunch and you've been
12 handed the jacket and the charge and the exhibits by Officer
13 Lafferty, only then may you begin your deliberations. And at
14 this time I will excuse Mr. Gillespie and Mr. Wade. If the
15 rest of y'all would retire to the jury room at this time.

16
17 (At 11:59 a.m., the jury retired from the courtroom to begin
18 deliberations upon its verdict.)

19
20 THE COURT: All right. Mr. Wade and
21 Mr. Gillespie, I want to thank both of you for serving as
22 alternates in this case. I'm sure you understand how
23 important it is that we have alternates available if in the
24 event we needed you. At this time you are excused, and the
25 bailiffs will assist you in getting back to the hotel and

1 getting your belongings and making sure you have a ride home.
2 Thanks very much. And I don't plan to bring the jurors back
3 in after lunch so y'all don't need to be back here at 1 or
4 1:30 but leave your phone numbers where we can reach you
5 certainly. Stand in recess.

6 (Recess.)

7 THE COURT: The jury has a question, two questions
8 actually, that need to be answered. All right. Bring in the
9 jury, please.

10
11 (At 3:29 p.m., the jury returned to the courtroom and the
12 following proceedings were had to wit:)

13
14 THE COURT: All right. Ladies and gentlemen, I've
15 received two questions that were submitted to me. The first
16 reads as follows: Should we consider -- should we consider
17 every witness's testimony as evidence?

18 As I read to you earlier in the charge, you will take
19 all of the evidence adduced in the case by the State and the
20 Defendant and give it a full, fair, and impartial
21 consideration. If there are any conflicts in the statements
22 of the different witnesses, it is your duty to reconcile them
23 if you can for the law presumes that every witness has sworn
24 to the truth. But if you cannot, the law makes you the sole
25 and exclusive judges of the credibility of the witnesses and

1 the weight to be given their testimony.

2 In forming your opinion as to the credibility of a
3 witness, you may look to the proof, if any, of his general
4 character, the manner and demeanor of the witness, the
5 consistency or inconsistency of his statements, their
6 probability or improbability, his ability and willingness to
7 speak the truth, his intelligence and means of knowledge, his
8 motive to speak the truth or swear to a falsehood, his
9 interest or lack of interest in the outcome of the trial.

10 When the defendant makes himself a witness in his own
11 behalf, his credibility is to be determined by the same rules
12 by which the credibility of others is determined and you will
13 give to the defendant's testimony in this case such weight as
14 you may think it entitled to.

15 There was also some mention made of a question about
16 transcripts of certain witness's testimony. There are no
17 transcripts in the trial. You must rely on your memory,
18 individually and collectively, your memory of the testimony
19 during the trial, but there are no transcripts made
20 simultaneous to the testimony to be passed back to the jury
21 during their deliberations.

22 And then the final question is a factual question and I
23 can only state that I am not allowed to make any comment on
24 the facts of the case. It's up to you jurors to recall again
25 individually and collectively what the facts of the case are

1 and were and reach your verdict based on the proof that came
2 into evidence this week from the witness stand and the
3 physical proof and the law that I've presented to you. But I
4 cannot answer any questions that relate to factual issues of
5 the case.

6 Having said that, I'll ask you to return to the jury
7 room to resume the deliberations.

8
9 (At 3:33, p.m., the jury retired from the courtroom to resume
10 deliberations upon its verdict.)

11
12 MR. J. BAILEY: May we approach?

13 THE COURT: You may.

14 (Bench conference commenced.)

15 MR. J. BAILEY: Are we entitled to know what the
16 fact question is?

17 THE COURT: Oh, sure. I just didn't see any need
18 to read it out.

19 MR. J. BAILEY: Yeah, that's why I asked to
20 approach.

21 THE COURT: When performing the erotic
22 asphyxiation was penetration to Sheila performed?

23 MR. J. BAILEY: Okay. Thank you. I think that is
24 a fact question. I just wanted to know, Your Honor.

25 (Said bench conference concluded.)

1 THE COURT: Take him out. Stand in recess.

2 (Recess.)

3 THE COURT: Bring in the jury, please. The jury
4 has asked for a few more minutes to continue their
5 deliberations. Take him out, please. Stand in recess.

6 (Recess.)

7 THE COURT: Bring in the jury, please. All right.
8 Let's take him out. Stand in recess.

9 (Recess.)

10 THE COURT: Bring in the jury, please.

11

12 (At 10:02 p.m., the jury returned to the courtroom and the
13 following proceedings were had to wit:)

14

15 THE COURT: All right. Ladies and gentlemen, have
16 you reached your verdict at this time?

17 FOREPERSON: Yes, Your Honor.

18 THE COURT: May I see the jacket, please.

19 All right. In Indictment 05-03038 your verdict reads
20 as follows: We, the jury, find the defendant guilty of murder
21 in the second degree as included in the indictment. Signed
22 Mary Brooks, 12/9/05.

23 (The jury was polled and no negative responses were elicited.)

24 THE COURT: All right. I want to thank all of you
25 for serving on this jury. As the attorneys have already

1 mentioned, we appreciate and understand the sacrifice and
2 inconvenience that's involved in serving on a sequestered jury
3 of this sort. It's not an easy task, and it takes you away
4 from your families for an entire week. But our system would
5 not work -- in my opinion it works better than any system in
6 the world -- and it would not work like it does without
7 citizens from the community agreeing to serve on juries and
8 listen to cases and reach verdicts. So we all genuinely
9 appreciate your service this week on this jury.

10 At this time you are excused. Of course the bailiffs
11 will help you get back to the hotel and make sure you have
12 your belongings and have a ride home. Thank you very much.

13 (Jury out.)

14 THE COURT: All right. Stand up, Mr. Braswell.
15 Mr. Braswell, after a fair and impartial trial by a jury of
16 your peers, said jury having found you guilty in Cause Number
17 05-03038 of the included offense of murder in the second
18 degree, I hereby find you guilty of that offense. The
19 sentencing hearing will be scheduled for the 17th of January.
20 Of course all bond if there is any at any point in time is
21 revoked. January 17th for sentencing.

22 MR. W. BAILEY: Your Honor, can we pick another
23 date other than the 17th? I've got a trial starting in
24 Federal Court on that day.

25 THE COURT: The 20th? January 20th? Will you be

1 through by then?

2 MR. W. BAILEY: That trial probably is going to
3 run somewhere between -- maybe a two-week trial.

4 THE COURT: Okay. Let's set it on the -- why
5 don't we set it on the 6th, January 6th? Can you be here that
6 date?

7 MR. W. BAILEY: That would be fine.

8 MR. J. BAILEY: And of course we will just for the
9 record --

10 THE COURT: Get a date for motion for new trial at
11 that time. January 6th. Step out, sir.

12

13 THIS WAS ALL THE EVIDENCE INTRODUCED AND PROCEEDINGS
14 HAD RELEVANT TO QUESTIONS RAISED ON APPEAL ON THE TRIAL OF
15 THIS CAUSE.

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

STATE OF TENNESSEE)

)

COUNTY OF SHELBY)

I, the undersigned, **Katherine Knowles**, Court Reporter for the Thirtieth Judicial District of the State of Tennessee, do hereby certify that the foregoing to be true, accurate and complete transcript to the best of my knowledge, understanding and ability of all the evidence that was heard in this cause in Division 5 of the Criminal Court for Shelby County, Tennessee, before the Honorable Joseph B. Dailey, Presiding Judge, on the 5th day of December, 2005.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Dated this 10th day of April, 2006.


Katherine Knowles
Court Reporter

IN THE CRIMINAL COURTS FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION FIVE

STATE OF TENNESSEE
APPELLEE

VS.

VERN BRASWELL
APPELLANT

Docket No. 05-03038


FILED: 8-16-06
WILLIAM R. KEY, CLERK

BY: Clear D.C.

**APPELLANT'S FILING OF TRANSCRIPT AND NOTICE OF FILING TO THE
DISTRICT ATTORNEY GENERAL**

Pursuant to Rule 24(b), Tennessee Rules of Appellate Procedure, this is to notify that the Petitioner/appellant has filed the transcript with the Clerk of the Criminal Court of Shelby County, Tennessee.

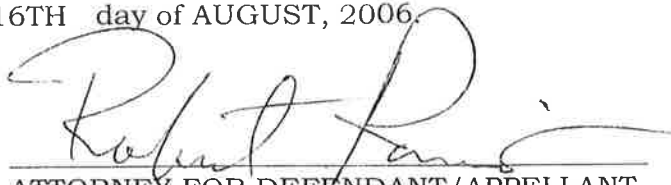
This 16TH of AUGUST, 2006.



ATTORNEY FOR DEFENDANT/APPELLANT

CERTIFICATE OF SERVICE OF NOTICE
TO THE DISTRICT ATTORNEY GENERAL

I certify that I have delivered a copy of this Certification and Filing of Transcript to the office of the District Attorney General on this 16TH day of AUGUST, 2006.



ATTORNEY FOR DEFENDANT/APPELLANT

IN THE CRIMINAL COURTS FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION NINE

STATE OF TENNESSEE
APPELLEE

VS.

VERN BRASWELL
APPELLANT

Docket No. 05-03038

FILED: 10-11-06

WILLIAM R. KEY, CLERK

BY: [Signature] D.C.

**ORDER APPROVING TRANSCRIPT OF EVIDENCE AND MAKING THE
TRANSCRIPT OF EVIDENCE PART OF THE RECORD ON APPEAL**

This is to certify that the Transcript of Evidence adduced at the Trial of this cause has been filed with the Clerk on AUGUST 16, 2006 in accordance with Tennessee Rules of Appellate Procedure, Rule 24, Section (b) within ninety (90) days after filing the Notice of Appeal, which was filed on MAY 22, 2006 and has been examined by counsel for the defendant and the Assistant Attorney General and has been found by both to be a true and accurate record of the proceedings in this cause and has been approved by both counsel.

This is to further certify that the Court has examined the Transcript of Evidence of the Trial in this cause and has found it to be a true and accurate record of the proceedings. The Court therefore certifies that the Transcript of Evidence reflects truly & accurately the trial of this cause.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Transcript of Evidence is hereby approved by the Court and counsel for the defendant and the State of Tennessee, and the Clerk is hereby ordered to make the Transcript of Evidence part of the record on appeal in this cause.

ENTERED, this the 11 day of October, 2006

APPROVED:

[Signature]
JUDGE

ATTORNEY FOR THE STATE OF TENNESSEE

[Signature]
ATTORNEY FOR THE DEFENDANT/APPELLANT

STATE OF TENNESSEE}
SHELBY COUNTY}

I, William R. Key, Clerk of the Criminal Court of the 30th Judicial Circuit at Memphis, do hereby certify that the forgoing **3711** pages of writing contain a full, complete, true and perfect copy of the **TRANSCRIPT OF THE RECORD** in the case of:

STATE OF TENNESSEE

vs.

Docket No **05-03038**

VERN BRASWELL

FIRST DEGREE MURDER; as the same appears on file, and of record in my office, and that I am the Custodian of said records and that all **entries** are presently under my care, custody and control.

WITNESS my hand and the seal of said Court, at office in Memphis, this **26TH** day of **OCTOBER 2006.**

WILLIAM R. KEY, Clerk

By: C. Leary D.C.

SEAL